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Supreme Court of the United States

OCTOBER TERM, 1943

No. 938

W. E. VALLIANT & CO., INC.,
Petitioner,

AGAINST

RAYONIER, INC.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

JOHN H. SKEEN,
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April 18, 1944.

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, W. E. Valliant & Co., Inc., prays that a writ of certiorari issue to review the decision of the United States Circuit Court of Appeals for the Fourth Circuit, rendered February 3rd, 1944, affirming the decree of the District Court for the District of Maryland dated July 15th, 1943 (R. p. 87). That decree denied to this Petitioner limitation of liability claimed under R. S. 4281-4285 (46, U. S. Code, Secs. 181-185). Rayonier's libel alleged the total loss of its goods in transit. The fault of vessel has been decided against Petitioner and is not here questioned. Petitioner's defense, duly presented by a peti-

tion for limitation, is that liability having been found, it is nevertheless entitled to limit its liability to the value of its interest in the vessel under the statutes cited.

JURISDICTION

Jurisdiction is based on Section 240(a) of the Judicial Code as amended; 28 U. S. Code, Sec. 347.

The mandate of the Circuit Court of Appeals was entered February 4, 1944, but was stayed by order of said Court dated March 7th, 1944 (R. p. 88). By further order, dated April 4th, 1944, the mandate was stayed until April 19, 1944.

OPINIONS BELOW

The District Court's opinion is found at R. p. 74. No specific findings of fact or conclusions of law are stated in the opinion, but the final decree (R. p. 79) adopts the opinion as stating findings of fact and conclusions of law.

The opinion of the Circuit Court of Appeals is reported in 140 F(2d) 589, and is also found at R. p. 84.

SUMMARY STATEMENT

The action arises out of the loss of Rayonier's goods while on board Petitioner's motor vessel "E. MADISON HALL". The vessel ran on a partly submerged, unlighted wreck of an oil barge in Upper Chesapeake Bay, in darkness, on March 31st, 1942, and the vessel, together with the cargo, became a total loss. No documents of carriage are involved. The case being in admiralty, it was tried to the Court without a jury on the testimony of witnesses in open Court.

The District Court found that the vessel was on a course approximately northeast towards Turkey Point; that the

wreck was unlighted, lay west of the ship channel at Turkey Point and probably extended out into the ship channel. That the master in charge of the vessel at the time of the accident did not know the location of the wreck, but the first mate was aware of it, having passed it coming down the Bay in the same vessel about two weeks before. That when the mate turned the wheel over to the master five minutes before the collision, the mate told the master that the wreck was nearby. The District Court found that the master was negligent in not reducing the speed of the vessel, and for other reasons not now material (R. p. 76).

The District Court further found that the mate, who was relieved by the master five minutes before the accident, was an able seaman, and the mate had instructed the lookout, also an able seaman, to look out for the wreck, but the latter was allowed to remain in the wheelhouse (R. p. 76).

The District Court further held, in denying Petitioner limitation of liability, that in order to entitle a ship owner to the benefit of that statute, the loss, damage or injury must be "without the privity or knowledge of the owner"; that the master had testified that he had discussed with his superior, Mr. Valliant, the requirement in the vessel's inspection certificate to have aboard a first class pilot, but that Mr. Valliant, because of the existing emergency and the difficulty, if not inability, to engage such a pilot, had instructed the master to proceed without one; that "under such circumstances, there can be no question but that the vessel owner was in privity with the master with respect to the latter's negligence, which, as we have just shown, was unquestionably one of the proximate causes of the disaster. Accordingly, the condition under which alone

a vessel owner may have the benefit of the statute, has clearly not been met." (R. p. 77).

The Circuit Court of Appeals, after reciting the facts leading to the conclusion that the vessel was at fault, held on the question of the owner's right to limit its liability that the certificate of inspection required a pilot, in addition to a master and first-class pilot, but that there was only one pilot on board, the master himself, who was below during the watch of the mate (R. p. 85); and in dealing with Petitioner's contention that the absence of the additional pilot did not contribute to the accident because the accident did not occur until after the master had taken over from the mate and had himself made a slight change in the vessel's course, further held that this position could not be sustained (R. p. 86). The Circuit Court of Appeals gave as its reasons for so holding, that the mate, "knowing that the wreck lay in the course of the ship, kept her full speed ahead, without a proper lookout on a dark and rainy morning, until she was within two-thirds of a mile of the unlighted wreck"; that he kept her on her course, although he knew a change of course either to the east or to the west, could be safely made so as to avoid all risk of collision; and that it cannot be said that a qualified pilot would not have taken one of these alternatives. "On the contrary, it is quite probable that such a pilot would have done so, and that all danger of collision with the wreck would have been avoided, and the vessel would have passed Turkey Point on her port side and proceeded safely in a northeasterly direction up the Elk River to the Canal. Had either course been adopted, the vessel would have been out of danger when the master took charge, and the collision would not have occurred." (R. p. 86). The Circuit Court of Appeals then held that

the limitation of liability statutes should be construed liberally to effectuate the beneficial purposes of the legislation, citing *Larsen v. Northland Transportation Co.*, 292 U. S. 20, and *Coryell v. Phipps*, 317 U. S. 406; and that limitation of liability will not be denied on the ground of the privity or knowledge of the owner unless it involves participation in some fault which caused or contributed to the injuries suffered, citing *The Virginia*, D. C. Md. 264 Fed. 986, affirmed 4 Cir. 278 Fed. 877; and *Southern Pacific Co. v. U. S.*, 2 Cir. 72 Fed. (2d) 212 (R. p. 86); the latter case holding that the absence from the ship of a first assistant engineer required as part of the complement of the crew by the local inspectors did not deprive the owner of his right to limitation when the evidence showed that the defect was not a contributing cause to the collision. The Court also cited *The North Star*, 2 Cir., 255 Fed. 955, and *Hartford and N. Y. Transportation Co. v. Rogers & Hubbard Co.*, 2 Cir., 47 Fed. (2d) 189 (R. p. 87). Finally, the Circuit Court of Appeals held that the burden of proof to establish lack of privity or knowledge rests upon the owner seeking limitation of liability, and, where the owner has privity or knowledge of some violation of the statutes affecting the navigation of the ship, it is presumed under the doctrine of *The Pennsylvania*, 19 Wall. 125, 136, that the fault is at least a contributing cause to the loss, and the owner must bear the burden of showing not merely that the fault probably was not, but also that it could not, have been a contributing cause of the disaster; citing *N. Y. Marine #10*, 2 Cir., 109 Fed. (2d) 564, 566; *The Denali*, 9 Cir., 105 Fed. (2d) 413, 420; and concluding that this burden has not been borne by the owner in the pending case and the decree of the District Court must therefore be affirmed (R. p. 87).

QUESTIONS PRESENTED

1. Did the District Court or the Circuit Court of Appeals have any evidence whatever before it, supporting the decree denying limitation?

2. Did the District Court make any findings of fact or reach any conclusions of law justifying denial of limitation?

3. Did the Circuit Court of Appeals err in affirming the District Court in denying limitation upon a non-existent factual basis, and in supplying the deficiency with surmises and speculations of its own?

4. Is the doctrine of *The Pennsylvania* properly applied to the case at bar as the basis of decision?

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals, affirming denial of limitation, is in conflict with decisions of this Court in the following cases:—*Coryell v. Phipps,* 87 L. Ed. 363, 1943 A. M. C. 18; *Larsen v. Northland Transportation Co.,* 292 U. S. 20.

The decision of the Circuit Court of Appeals is also in conflict with decisions of the Second Circuit Court of Appeals in the following cases:—*Southern Pacific Co. v. U. S.,* 72 Fed. (2d) 212; *The North Star,* 255 Fed. 955; *Hartford & New York Transportation Co. v. Rogers & Hubbard Co.,* 47 Fed. (2d) 189; *The 84-H,* 296 Fed. 427; and *The Thessaloniki,* 267 Fed. 67; and with the decision of the Ninth Circuit Court of Appeals in *The Princess Sophia,* 61 Fed. (2d) 339, and the decision of the Fourth Circuit Court of Appeals in *The Virginia,* 278 Fed. 877, certiorari denied, 66 L. Ed. 421; see also the District Court opinion in the same case, 264 Fed. 986.

2. The decision of the Circuit Court of Appeals unsettles the law as to the construction and application of a Federal statute affecting the whole shipping interest of the nation; and leaves the industry in doubt as to its rights and obligations.

3. The doctrine of *The Pennsylvania*, 19 Wall. 125-136, as to the burden of proof was wrongly applied to the case at bar.

4. The decisions of the District Court and of the Circuit Court of Appeals, denying limitation of liability, lack any evidentiary support. The basis of judicial determination is absent.

WHEREFORE, the Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Fourth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and of the proceedings in the case numbered and entitled on its dockets "No. 5187, W. E. Valliant & Company, Appellant v. Rayonier, Incorporated, Appellee"; and that the decision of the said Circuit Court of Appeals in said case be reversed, and that your Petitioner have such other and further relief in the premises as may be just.

W. E. VALLIANT & CO., INC.,
By JOHN H. SKEEN,
Counsel.

CERTIFICATE

I HEREBY CERTIFY, That I have examined the aforegoing Petition, that in my opinion it is well founded and entitled to the favorable consideration of the Court, and that it is not filed for the purpose of delay.

JOHN H. SKEEN,
Counsel, 1508 First National Bank Bldg., Baltimore 2, Maryland.

Baltimore, Maryland,
April 18, 1944.